

March 22, 2007

TO: Windham Planning Board
FROM: Doug Webster, Planning
RE: 07-06 Village at Little Falls
Addendum to 3/21/07 Memo

Introduction:

After compiling and sending the memo regarding Little Falls, I had an opportunity to talk with Mr. Lee Allen at Northeast Civil Solutions. As a result of that discussion, I have a few corrections to the memo dated 3/21/07.

There were also a few attachments that relate to the Little Falls project that have been attached to this update. These attachments include; (1) Subdivision and Site Plan checklists filled out by Planning, and (2) Memo to Ken Cole regarding a request for a legal opinion.

Corrections to Planner's 3/21/07 Memo:

- A.2: The wetland will be permitted under the full NRPA permit. If this were the only DEP issue on the lot, it would be eligible for a PBR but since the site is triggering a full permit, the filling will become part of the full permit.
- A.4: The fence is being required for safety purposes since the velocity of the river is quite high in this location.
- A.6: The FEMA application is a two-part process. It begins with a "Conditional" CLOMR-F. The "C" is for conditional and the "F" is for fill. If this is accepted then one applies for a LOMR-F.

Corrections to Subdivision Checklist Notes:

Section I.A.11 and I.C.4: The adjacent zoning and property owners are shown on the Title Page (sheet 1 of 37).

Corrections to Site Plan Review Checklist Notes:

- Section II E.5: This area is on public water and sewer so this is not applicable.
- Section III.H: The building elevations do not need to be submitted for pre-application. Mr. Allen indicated that he may have some conceptual drawings for the Board at the meeting.
- Section III.M: Mr. Allen indicated that they are ready and willing to place any markers the Board may want to see but that they often disappear shortly after placed on the property.
- Section IV.A: A location map is right on the face of the cover sheet. Who wrote that prior memo again?!?
- Section IV.D: The abutting property owners are shown on the cover sheet.

VIL_RESP01335

March 21, 2007

TO: Ken Cole, JBG & H

FROM: Doug Webster, Windham Planning

CC: Roger Timmons, Community Development Director
Lisa Fisher, Planning Board Secretary

RE: Request for legal opinion
Little Falls Contract Zone Agreement
Changes to proposed site layout

I am writing to request an opinion regarding the Contract Zone Agreement for the Village at Little Falls. As you are aware, this agreement was signed in June of 2005. The applicants have already constructed the 24-unit age-restricted building on a separate lot and are at the beginning of the PB review process for the balance of the property.

The signed Contract Zone agreement contains several specific provisions including permitted densities as established in Section 3 on the second page of the agreement. This section specifically states that one building may contain up to 16 units and that the remaining buildings containing up to 4 units. The plans submitted to the Planning Board show two 12-unit buildings. The table below illustrates the changes to the various residential housing types.

Table

<u>Contract</u>	<u>#Units</u>	<u>Now</u>	<u>#Units</u>
Apartments	16	Apartments	24
Duplexes	22	Duplexes	0
Porch Units	13	Porch Units	9
Townhouses	33	Townhouses	33
Expanded	1	Expanded	0
Townhouse		Townhouse	
Cottage	0	Cottage	18
Single Family	0	Single Family	1
Total:	85	Total:	85

Note: The proposed Cottages appear to be duplexes, two units attached at the garages.

Section 5 of the Contract Zone agreement (Status of Approvals/ Amendment) on page 5 specifically discusses the necessary procedural steps for any proposed changes. This section states that the Planning Board has the authority to make changes to the agreement within the established parameters *without* involving the Town Council.

VIL_RESP01336

There appear to be two questions:

- (1) Does the Planning Board have the authority to review/ approve the changes as outlined above, and
- (2) Does the *agreement* need to be changed or can the project be reviewed with the present Contract Zone given the proposed changes and the language in Section 3

Thank you for your help on this matter.

TOWN OF WINDHAM, MAINE
MAJOR AND MINOR SUBDIVISION PLAN APPLICATION FORM –
Preapplication/Sketch Plan
(Ordinance Chapter 213 Article IV)

The preapplication/sketch plan application shall include fifteen (15) copies of each plan, map, or drawing, and any related information which shall be printed or reproduced on paper.

	Check when completed	
	Applicant	Staff
Name of Applicant: HRC – Village at Little Falls, LLC c/o Steve Etzel	X	
Mailing Address: 2 Market Street, Portland, Maine 04101	X	✓
Phone: 207-772-7219	X	✓
FAX: 207-772-7011	X	✓
Email : setzel@questorco.com		✓
Name of Subdivision: Village at Little Falls	X	✓
Street Address: Route 202, Windham Maine	X	✓
Proposed Use: Residential Condominiums	X	✓
Proposed subdivision <u>X</u> Major <u> </u> Minor	X	✓
Amendment to previously approved subdivision plan? Yes <u> </u> No <u>X</u>	X	✓
Total acreage of parcel(s): 8.03 ac	X	✓
Zone (check all that apply) <u> </u> Resource Protection <u>X</u> General Shoreland Development <u> </u> Limited Residential <u>X</u> Stream Protection <u> </u> Aquifer Protection Overlay <u> </u> Industrial Park Overlay <u> </u> Farm <u> </u> Farm Residential <u> </u> Light Density Residential <u> </u> RM Medium Residential <u> </u> Commercial I <u> </u> Commercial II <u> </u> Commercial III <u> </u> Industrial <u> </u> Enterprise Development <u>X</u> Contract; Date Approved 6/01/05	X	✓
Proposed single family cluster development? Yes <u> </u> No <u>X</u>	X	✓
Proposed multi-family cluster development? Yes <u> </u> No: <u>X</u>		
Conditional Use Yes <u> </u> No: <u>X</u>	X	✓
Special Exception Yes <u> </u> No: <u>X</u>	X	✓
The Town will correspond with only one contact person/agent for this project. Please provide the requested information regarding the contact person/agent.		
Contact person/agent: Northeast Civil Solutions, Inc. c/o Lee Allen, PE	X	✓
Mailing Address: 153 US Route One, Scarborough, Maine 04074	X	✓
Phone: 207-883-1000	X	✓
Cell: 207-210-7726	X	✓

VIL_RESP01338

Approved _____
amended _____

FAX: 207-883-1001	X	✓
Email: lee.allen@northeastcivilsolutions.com	X	✓
I certify that I received and read the PLANNING BOARD APPLICATION PROCEDURES AND REQUIREMENTS and that all the information in this application form and accompanying materials is true and accurate to the best of my knowledge.		✓
Signature of Applicant (If signed by applicant's agent, provide written documentation of authority to act on behalf of applicant.) <i>Lee Allen</i>	X	✓
Print or type name and title of signer Lee Allen, P.E., Project Manager	X	✓
Date Prepared: March 2, 2007	X	✓

Subdivision Plan Preapplication/Sketch Plan EXHIBIT CHECKLIST

Please mark each exhibit in the application as follows:

EXHIBIT	1	Soils ✓
EXHIBIT	2	Covenants and Easements ✓
EXHIBIT	3	Community Facilities and Utilities ✓
EXHIBIT	4	Description of Project ✓
EXHIBIT	5	Cluster Development NA
EXHIBIT	6	Right, Title, or Interest ✓
EXHIBIT	7	Corporate or Partnership Status ✓

See 3-ring binder

VIL_RESP01339

Subdivision Plan Preapplication/Sketch Plan Application

A preapplication/sketch plan must be submitted and shall show, in simple sketch form, neatly done, the proposed layout of streets, lots, and other features in relation to existing conditions (Section 213-6.B. and, if a proposed cluster development, Section 140-36). The preapplication/sketch plan shall include the existing data listed below:

	Check when completed	
	Applicant	Applicant
I. SUBDIVISION PLAN DRAWINGS AND MAPS showing or accompanied by the following information:		
A. Subdivision Plan drawings		Sheet #3
1. Number and date all sheets and provide space for revision dates	X	✓
2. Show all dimensions in feet and decimals, drawn to a scale of not more than one hundred (100) feet, preferably forty (40) feet, to the inch	X	✓
3. Layout of lots and other features in relation to location of open drainage courses, wetlands, stone walls, graveyards, fences, stands of trees, and other important or unique natural areas and site features, including but not limited to floodplains, deer wintering areas; significant wildlife habitats, fisheries, scenic areas; habitat for rare and endangered plants and/or animals; unique natural communities and natural areas; sand and gravel aquifers; and historic and/or archaeological resources; together with a written description of such features (Section 213-6.B.)	X	✓
4. Boundary lines (Section 213-6.B.1.)	X	✓
5. Location and width of existing and proposed easements (Section 213-6.B.2.)	X	✓
6. Location, name, and right-of-way width of existing and proposed streets on and adjacent to the property (Section 213-6.B.3.)	X	✓
7. Walks, curbs, gutters, culverts and other known and located underground structures, within and immediately adjacent to property (Section 213-6.B.4.)	X	✓
8. Utilities (Section 213-6.B.5.)	X	✓
a. Location and size of proposed and existing sewer and water mains		✓
b. Location of fire hydrants, electric, and telephone poles	X	✓
c. Location of proposed and existing streetlights	X	✓
9. Soil test data, accompanied by a written description, identified as EXHIBIT 1 , adequate to show that the subsurface soil conditions on the tract will accommodate the proposed development (Section 213-6.B.6.)	X	✓
10. Existing land use on and adjacent to the property (Section 213-6.B.7)	X	
11. Show the entire parcel(s) and zoning on and adjacent to property	X	✓

Sw. land
have
plan

Adjacent
Land Use
not shown

VIL_RESP01340

Approved _____
Amended _____

	Check when completed	
	Applicant	Applicant
12. Location of temporary markers adequate to enable the Planning Board to locate readily and appraise the basic layout of the site in the field (Section 213-8.B.13.)	X	
B. Title Block		✓
1. Identify plan as "Subdivision Plan", "Amended" if applicable	X	✓
2. Name of the project (Section 213-6.B.8.)	X	✓
3. Name(s) and address(es) of owner(s) of record and applicant (Section 213-6.B.8.)	X	✓
4. Name(s) and address(es) of plan designer(s)	X	✓
C. Plan References		✓
1. North arrow (using Maine State Grid) (Section 213-6.B.8.)	X	✓
2. Graphic map scale (Section 213-6.B.8.)	X	✓
3. Purpose of existing and proposed easements (Section 213-6.B.2.)	X	✓
4. Names of adjoining property owners (Section 213-6.B.8.)	X	
5. Name(s) and address(es) of plan designer(s)	X	✓
D. Utility Notes		✓
If sewer or water mains are not on or adjacent to the site, indicate the distance to and size of nearest mains (Section 213-6.B.5.)	X	✓
E. Additional Information Notes		✓
Any additional or general plan notes	X	✓
II. GENERAL INFORMATION		
A. Existing zone(s) of the site: <u>Contract</u>	X	✓
Shoreland District Yes <u>X</u> No <u> </u> Type <u> </u>	X	✓
Overlay District Yes <u> </u> No <u> </u> Type <u> </u>	X	NA
Contract Yes <u>X</u> No <u> </u> Date Approved <u>6/01/05</u>	X	✓
B. Attach, as <u>EXHIBIT 2</u>, summary list and copies of all existing covenants (Section 213-6.C.1.), easements, or other burdens for this property. Reference each easement to the plan or drawing on which it is shown.	X	✓
C. Attach, as part of <u>EXHIBIT 1</u>, a medium intensity standard soil survey (Section 213-6.C.2.)	X	
D. Attach, as <u>EXHIBIT 3</u>, a written description of available community facilities and utilities (Section 213-6.C.3.)	X	✓
III. PROJECT DESCRIPTION		
A. Attach, as <u>EXHIBIT 4</u>, a written description of the overall project, including number of lots, typical lot width and depth, price range, business areas, playgrounds, park areas, other public areas, proposed protective covenants, and proposed utilities and street improvements (Section 213-6.C.4.)	X	✓
B. Name, approval date, amendment date, and lot number (if applicable) of previously approved subdivision (if applicable)	NA	NA

Measure
of
Status

See Exhibit
1

VIL_RESP01341

Approved _____
Amended _____

4. Subdivision Application Plan to Application Subdivision Plan


[illegible]

		Check when completed	
		Applicant	Staff
Name of Applicant: HRC – Village at Little Falls, LLC. c/o Steve Etzel		X	✓
Mailing Address: 2 Market Street, Portland, Maine 04101		X	✓
Phone: 207-772-7219		X	✓
FAX: 207-772-7011		X	✓
Email: setzel@questorco.com		X	✓
Name of Project” Village at Little Falls		X	✓
Street Address: Route 202, Windham, Maine		X	✓
Proposed Use: Residential Condominiums		X	✓
Amendment to previously approved site plan? Yes _____ No <u>X</u>		X	✓
Total acreage of parcel(s): 8.03 ac		X	✓
Zone (check all that apply)		X	✓
<input type="checkbox"/> Resource Protection <input checked="" type="checkbox"/> General Shoreland Development			
<input type="checkbox"/> Limited Residential <input checked="" type="checkbox"/> Stream Protection			
<input type="checkbox"/> Aquifer Protection Overlay <input type="checkbox"/> Industrial Park Overlay			
<input type="checkbox"/> Farm <input type="checkbox"/> Farm Residential			
<input type="checkbox"/> Light Density Residential <input type="checkbox"/> RM Medium Residential			
<input type="checkbox"/> Commercial I <input type="checkbox"/> Commercial II			
<input type="checkbox"/> Commercial III <input type="checkbox"/> Industrial			
<input type="checkbox"/> Enterprise Development <input checked="" type="checkbox"/> Contract; Date Approved 6/01/05			
Conditional Use Yes _____ No <u>X</u>		X	✓
Special Exception Yes _____ No <u>X</u>		X	✓
The Town will correspond with only one contact person/agent for this project. Please provide the requested information regarding the contact person/agent.			
Contact person/agent: Northeast Civil Solutions, Inc. c/o Lee Allen, PE		X	✓
Mailing Address: 153 US Route One, Scarborough, Maine 04074		X	✓
Phone: 207-883-1000		X	✓
Cell: 207-210-7726		X	✓
FAX: 207-883-1001		X	✓
Email: lee.allen@northeastcivilsolutions.com		X	✓

VIL RESP01343

Approved _____
 Sincerely,

- 5. P_{max} by dividing P_{max} and P_{min}

I certify that I received and read the PLANNING BOARD APPLICATION PROCEDURES AND REQUIREMENTS and that all the information in this application form and accompanying materials is true and accurate to the best of my knowledge.		
Signature of Applicant (If signed by applicant's agent, provide written documentation of authority to act on behalf of applicant.) 	X	✓
Print or type name and title of signer Lee Allen, P.E. Project Manager	X	✓
Date Prepared March 2, 2007	X	✓

Site Plan Preapplication/Sketch Plan EXHIBIT CHECKLIST

Please mark each exhibit in the application as follows:

EXHIBIT	1	Project Description - See SD- Ex #4
EXHIBIT	2	Covenants and Easements - SD Ex. #2 + Sheet 3
EXHIBIT	3	Access to the Property ✓
EXHIBIT	4	Soils - See Exhibit #1 of SD
EXHIBIT	5	Right, Title, or Interest - See Ex. #6 of SD
EXHIBIT	6	Corporate or Partnership Status - See Ex. #7 of SD
EXHIBIT	7	Community Facilities and Utilities - See Ex. #3 of SD

VIL_RESP01344

Site Plan Preapplication/Sketch Plan Application

A preapplication/sketch plan must be submitted and shall show, in simple sketch form, neatly done, the proposed layout of streets, and other features in relation to existing conditions. The preapplication/sketch plan shall include the information listed below:

	Check when completed	
	Applicant	Staff
I. PROJECT DESCRIPTION		
Attach, as EXHIBIT 1 , a written description of the overall project, including:	X	✓
A. objectives and proposed uses of property		
B. name, approval date, amendment date, and lot numbers of previously approved subdivision the site plan is in (if applicable)	X	NA
C. Assessor's Office Tax Map(s) and Lot Number(s)	X	✓
D. Existing land use	X	✓
II. Section 140-38.A.1-8.		
A. Boundary lines	X	✓
B. Attach, as EXHIBIT 2 , summary list and copies of all existing covenants, easements, or other burdens for this property. Reference each easement to the plan or drawing on which it is shown.	X	✓
C. Show the entire parcel(s), plus streets, private ways or roads, on and adjacent to property. Include name and right-of-way width and location on any property proposed for development. If access to the site is proposed on or off a private way or private road, attach, as EXHIBIT 3 , a title opinion, meeting generally acceptable standards, proving right of access to the site.	X	NA
D. Walks, curbs, gutters, culverts and other known and located underground structures, within and immediately adjacent to property	X	✓
E. Existing utilities on or adjacent to the tract:	X	
1. Location and size of all proposed and existing sewer and water mains. If mains are not on or adjacent to the site, indicate the distance to and size of nearest mains.		✓
2. Location of fire hydrants, electric, and telephone poles	X	✓
3. Location of proposed and existing streetlights	X	✓
4. Location of proposed and/or existing water or sewer lines. If proposed and/or existing water and sewer mains are not on or adjacent to the tract, indicate the distance to and size of nearest ones.	X	✓
5. Location of existing and proposed wells, septic systems, and subsurface drainage systems on and adjacent to property	X	
F. Attach as EXHIBIT 4 a medium intensity soils report, including a written description of soil test data and interpretation of engineering properties that show conditions on the property will accommodate the proposed development.	X	

See SD Exhibit #1

VIL_RESP01345

Approved _____
Signed _____

Application for a Site Plan Preapplication/Sketch Plan

	Check when completed	
	Applicant	Staff
III. SITE PLAN DRAWINGS AND MAPS showing or accompanied by the following information:		
A. Site Plan drawings		
1. Number and date all sheets (Section 140-38.A.9.) and provide space for revision dates	X	✓
2. Show all dimensions in feet and decimals, drawn to a scale of not more than one hundred (100) feet, preferably forty (40) feet, to the inch	X	✓
B. Title Block	X	✓
1. Identify plan as "Site Plan", "Amended" if applicable	X	✓
2. Name of the project (Section 140-38.A.8.)	X	✓
3. Name(s) and address(es) of owner(s) of record and applicant (Section 140-38.A.9.)	X	✓
4. Name(s) and address(es) of plan designer(s)	X	✓
C. Plan References		
1. North arrow (using Maine State Grid) (Section 140-38.A.9.)	X	✓
2. Graphic map scale (Section 140-38.A.9.)	X	✓
D. Zoning Notes		✓
1. Zoning district(s). If site is transected by a zone line or if zone line is within fifty (50) feet of the boundaries of the site, designation of that zone line.	X	
2. Total land area of property in number of square feet and in acres	X	
E. Natural Resource Notes		
Notes regarding important or unique natural areas and site features.	X	✓
F. Utility Notes		
1. Notes regarding utilities serving or proposed for the site	X	✓
2. Show the entire parcel(s), plus owner(s), land use, and zoning on and adjacent to property	X	
G. Additional Information Notes		
Any additional or general plan notes	X	✓
H. Location, dimensions, and shape of existing and proposed buildings (Section 140-38.B.)	X	
I. Location and dimensions of parking areas, loading and unloading facilities, driveways, fire lanes, and access points (Section 140-38.B.)	X	✓
J. Location of existing covenants (Section 140-38.B.1.)	X	✓
K. Soils, described in EXHIBIT 4 above (Section 140-38.B.2.)	X	✓
L. Available community facilities and utilities (Section 140-38.B.3.)	X	✓
M. Location of temporary markers adequate to enable the Planning Board to locate readily and appraise basic layout in the field (Section 140-38.A.10.)	X	

h

h

Proposed Elevations not Submitted

Unsure of Status

VIL_RESP01346

Approved
Amended

Submitted for Review

	Check when completed	
	Applicant	Staff
IV. LOCATION MAP		
A location map:	X	
A. drawn at scale of not more than four hundred (400) feet to the inch to show the relation of the proposed site plan to the adjacent properties and the general surrounding area within two hundred fifty (250) feet of property lines of the site (Section 140-38.C.)		
B. existing subdivisions and tract lines (Section 140-38.C.)	X	NA
C. location, widths, and names of existing, filed, or proposed streets, easements, building lines, and alleys on-site and on adjacent properties	X	
D. names of adjoining property owners (Section 140-38.A.9.)	X	
E. boundaries and designations of parks and other public spaces (Section 140-38.C.)	X	NA
F. outline of site plan and its street system and an indication of the future probable street system for remainder of tract, if the site plan covers only part of applicant's holding (Section 140-38.C.).	X	✓
V. RIGHT, TITLE, OR INTEREST		
A. Name, mailing address, phone, and fax number (if available) of record owner of the site	X	✓
Name HRC – Village at Little Falls	X	✓
Address: 2 Market Street, Portland, Maine 04101	X	✓
Phone: 207-772-7219	X	✓
FAX : 207-772-7011	X	✓
B. Attach, as <u>EXHIBIT 5</u> , evidence of applicant's right, title, or interest in the site including a complete copy of the:	X	✓
• applicant's deed, financial information may be deleted <u>or</u>		
• applicant's right or interest in the site <u>and</u> the current owner's deed for the site (if not already in applicant's ownership)		
Cumberland County Register of Deeds Book <u>20753</u> Page <u>21</u> and Deeds Book <u>24617</u> Page <u>165</u>	X	✓
C. <u>If</u> applicant is not an individual, attach as <u>EXHIBIT 6</u> , evidence of corporate or partnership status	X	✓
D. If applicant has interest in abutting property(s), identify by Tax Office's Map and Lot number(s) Map _____ Lot _____ Map _____ Lot _____ Map _____ Lot _____ Map _____ Lot _____	NA	NA
VI. COMMUNITY FACILITIES AND UTILITIES		
Attach, as <u>EXHIBIT 7</u> , a written description of available community facilities and utilities	X	✓

N
56
ith

Need 911
Names
Most Shown

VIL_RESP01347



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAWN R. GALLAGHER
COMMISSIONER

November 9, 2005

Village at Little Falls, LLC
c/o Renee Lewis
2 Market Street, 6th Floor
Portland, Maine 04101

Re: Village at Little Falls Property, 7 & 13 Depot Street, South Windham,
Maine-Voluntary Response Action Program No Action Assurance Letter

Ms. Lewis:

The Maine Department of Environmental Protection ("Department") has received and reviewed your application to the Department's Voluntary Response Action Program ("VRAP"), along with the environmental site assessment reports submitted by your environmental consultant for the project, Ransom Environmental Consultants, Inc. ("Ransom"). The application was submitted to the Department with the request that Village at Little Falls, LLC and Lumis, Inc., as applicants to the VRAP, receive the protections provided by the VRAP Law.

Based on the information presented in the reports, the Department agrees with the conclusions and recommendations for further actions at the property. The remedial actions include provisions for the excavation and disposal of petroleum and polychlorinated biphenyl ("PCB") contaminated soils, as well as the appropriate encapsulation of some of the PCB contaminated soils as described in the "Voluntary Response Action Plan for Village at Little Falls, LLC, South Windham, Maine", authored by Ransom and dated June 8, 2005.

The Department's concurrence with the proposed actions is conditioned on the prohibition of installation of groundwater extraction wells on the property without the permission of the Department.

Provided that the remedial actions are completed to the satisfaction of the Department, Village at Little Falls, LLC, Lumis, Inc., and their successors and/or assigns will be granted the liability protection provided by 38 M.R.S.A. §343-E(1) for the property located at 7 and 13 Depot Street, identified as Lots 6, 7 and 8 on Windham Tax Map 38, and described in Book 1681, Page 99, and Book 18046, Page 32 of the Cumberland

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

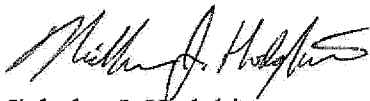
PRESQUE ISLE
1235 CENTRAL AVENUE
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: 764-1507

County Registry of Deeds. The Department will take no action against Village at Little Falls, LLC, Lumis, Inc., and those persons identified in 38 M.R.S.A. § 343-E(6).

Once the recommended remedial measures to be implemented at the property are completed, a report demonstrating the successful implementation of the tasks should be forwarded to the VRAP. Upon determining successful conclusion of the remedial tasks, the Department will issue to Village at Little Falls, LLC and Lumis, Inc. a Commissioner's Certificate of Completion.

If you have any questions regarding this letter, please feel free to call me at 207-287-4854.

Sincerely,



Nicholas J. Hodgkins
Division of Remediation
Bureau of Remediation & Waste Management

Pc: D. Todd Coffin, Ransom
Jon Woodard, Maine DEP

VIL_RESP01349

VLF



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCIO
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

Dear Permit Holder:

Please find enclosed your land use permit. The permit is presented in a format that includes findings of fact relevant to the criteria of the law under which the permit is issued, conclusions based on those facts and conditions of approval. Please carefully read your permit, especially the conditions of approval. If an error has occurred, please let us know and a corrected Order will be issued.

Appeal procedures have been enclosed for your information. Project modifications, condition compliance, and transfer are available upon request. Please call the nearest regional office to obtain those applications.

If we can be of additional service to you, let us know. Please write or call if you need more information.

Sincerely,

JEFFREY G. MADORE, Director
Division of Land Resource Regulation
Bureau of Land & Water Quality

APPPACKE

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2091
(207) 764-0471 FAX: (207) 764-0471

VIL_RESP01350



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE HOUSE STATION 17 AUGUSTA, MAINE 04333

DEPARTMENT ORDER

IN THE MATTER OF

H.R.C. -- VILLAGE AT LITTLE FALLS, L. L. C.) SITE LOCATION OF DEVELOPMENT ACT
Windham, Cumberland County) NATURAL RESOURCES PROTECTION ACT
VILLAGE AT LITTLE FALLS) WETLAND OF SPECIAL SIGNIFICANCE
L-23637-87-A-N (approval)) WATER QUALITY CERTIFICATION
L-23637-2G-B-N) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 481 et seq. and 480-A et seq., and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of H.R.C. -- VILLAGE AT LITTLE FALLS, L. L. C. with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicant proposes to construct an 85-unit condominium development with associated improvements on an 8.03-acre parcel of land. The proposed project includes two 12-unit apartment buildings, nine duplexes, nine porch-style units, 33 townhouse units, and one single-family residence. The proposed project is shown on a set of plans, the first of which is entitled "Cover/Index/Locus Map/Zoning -- Village at Little Falls," prepared by Northeast Civil Solutions, and dated June 1, 2007, with a last revision date of July 11, 2007. The project site is located between Depot Street and the Presumpscot River in the Town of Windham.

The proposed project triggers the "structure" threshold of the Site Location of Development Law ("Site Law," 38 M.R.S.A. § 482). The Town of Windham has delegated review authority pursuant to 38 M.R.S.A. § 489-A to conduct Site Law reviews of certain developments that would otherwise require Department review. However, the local reviewing authority requested that the Department review the proposed project.

The applicant is also seeking approval under the Natural Resources Protection Act (N.R.P.A.) to remove an abandoned mill building adjacent to the Presumpscot River and restore the river bank. Since a portion of the building was constructed over the river, this activity will result in the alteration of approximately 4,800 square feet of the river. A majority of the existing wall of the building will be removed, and the area will be regraded to in order to establish a vegetated river bank. A small section of the wall will be left in place to support an existing power plant. Other N.R.P.A. activities proposed by the applicant include filling in a small, artificially-created drainage channel (740 square

VIL_RESP01353

feet) and constructing stormwater outfall pipes within 75 feet, but not below, the 100-year flood elevation of the river.

B. Current Use of Site: An abandoned mill building and associated piles of debris occupy the site. The building was originally used as a pulp mill and later used as a steel mill. It is located directly on the Presumpscot River and is constructed on a pile-type foundation to allow the river to flow under the western end of the building. The building was abandoned in the late 1980's. The site is immediately downstream of an existing hydro-electric dam owned by Sappi, Inc.

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be \$10,000,000. The applicant stated that the project will be self-financed. Hudson Realty Capital Fund III, L. P. is the owner of HRC – Village at Little Falls, L. L. C. The applicant submitted a Balance Sheet for Hudson Realty Capital Fund III, L. P., dated December 31, 2006, which indicates that the company's total assets are well in excess of the proposed project's cost estimate.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards.

3. TECHNICAL ABILITY:

The applicant provided a list of projects successfully constructed by the applicant. The applicant also retained the services of Northeast Civil Solutions, a professional engineering firm, to assist in the design and engineering of the project.

The Department finds that the applicant has demonstrated adequate technical ability to comply with Department standards.

4. NOISE:

The Department finds that no regulated sources of noise have been identified.

5. SCENIC CHARACTER:

The project site currently contains a dilapidated industrial building. The building will be removed from the site and the river bank will be restored to a more natural, vegetated state. The proposed development was designed to match the village character of the surrounding neighborhood.

Based on the project's location and design, the Department finds that the proposed project will not have an unreasonable adverse effect on the scenic character of the surrounding area.

6. WILDLIFE AND FISHERIES:

The Maine Department of Inland Fisheries & Wildlife (MDIFW) reviewed the proposed project. In its comments, MDIFW stated that it found no records of any Essential or Significant Wildlife Habitats, or other wildlife habitats of special concern associated with this site.

The project site is located just downriver from an existing housing development and hydroelectric dam. A portion of the land directly adjacent to the Presumpscot River is owned by an abutter, Sappi Paper. A fisheries biologist from MDIFW commented that the Presumpscot River supports a variety of coldwater and warmwater fisheries, including some non-game fish populations. MDIFW recommended that a 100-foot wide vegetated buffer be provided to minimize impacts to the river and protect riparian functions, particularly in the area where the existing mill building is to be removed. The applicant responded to these concerns by revising the plans to provide a minimum 75-foot wide vegetated buffer on the project site. The only permanent structures within the 75-foot buffer will be three stormwater outfall pipes with associated riprap aprons and a portion of a subsurface stormwater system. The applicant submitted a river bank stabilization and planting plan (Sheet L1 of the set of plans referenced in Finding 1, last revised July 11, 2007) depicting the proposed improvements. Given the heavily developed nature of the site, the removal of the mill building, the stabilization of existing erosion problems, and the re-vegetation of the river bank are anticipated to provide immediate and long-term water quality benefits to the fishery.

The buffer will be located in a common area. Once the buffer is stabilized and planted, it should remain undisturbed, and be maintained first by the applicant and subsequently by the condominium owners association. Some disturbance of the buffer may be necessary in the future where a portion of the subsurface stormwater system is located within the buffer in the unlikely event that maintenance of the chamber system is required. However, the isolator row, which will require regular maintenance as discussed in Finding 10, is located outside the buffer.

Prior to occupancy of the first new building, the location of the river buffer must be permanently marked on the ground. The deed for the common area must contain deed restrictions relative to the buffer and have attached to it a plot plan for the area, drawn to scale, that specifies the location of the buffer. Prior to occupancy of the first new building, the applicant must submit a copy of the recorded deed restrictions, including the plot plan, to the BLWQ.

The Department finds that the applicant has made adequate provision for the protection of wildlife and fisheries with the establishment of a 75-foot wide vegetated buffer adjacent to the Presumpscot River.

7. HISTORIC SITES AND UNUSUAL NATURAL AREAS:

The Maine Historic Preservation Commission (MHPC) reviewed the proposed project and requested a Phase II Archaeological Survey of the site. The applicant submitted a report of the survey, prepared by NEA and dated June 2007. MHPC reviewed the report and stated, in a letter dated June 27, 2007, that the proposed project will have no effect upon any structure or site of historic, architectural, or archaeological significance as defined by the National Historic Preservation Act of 1966.

The Maine Natural Areas Program database does not contain any records documenting the existence of rare or unique botanical features on the project site and, as discussed in Finding 6, MDIFW did not identify any unusual wildlife habitats located on the project site.

The Department finds that the proposed development will not have an adverse effect on the preservation of any historic sites or unusual natural areas either on or near the development site.

8. BUFFER STRIPS:

A vegetated buffer adjacent to the Presumpscot River will be established as discussed in Finding 6.

The Department finds that the applicant has made adequate provision for buffer strips.

9. SOILS:

The applicant submitted soil survey information and a geotechnical report based on the soils found at the project site. This report was prepared by a registered professional engineer and reviewed by staff from the Division of Environmental Assessment (DEA) of the Bureau of Land and Water Quality (BLWQ). DEA also reviewed a Blasting Plan (dated March 19, 2007) submitted by the applicant and outlining the proposed procedures for removing ledge material from the project site. The applicant submitted additional information related to the blasting location map. DEA reviewed this additional information and commented that the applicant adequately addressed its concerns.

If a rock crusher will be utilized on site during construction, the applicant must insure that the crusher is licensed by the Department's Bureau of Air Quality and is being operated in accordance with that license.

The Department finds that, based on the soil information, geotechnical report, Blasting Plan, and DEA's review, the soils on the project site present no limitations to the proposed project that cannot be overcome through standard engineering practices.

10. STORMWATER MANAGEMENT:

The proposed project includes approximately 3.1 acres of new impervious area and 7.5 acres of developed area. It lies within the watershed of the Presumpscot River. The applicant submitted a stormwater management plan based on the basic, general, and flooding standards contained in Department Rules, Chapter 500. The proposed stormwater management system consists of 17 bioretention cells and a subsurface soil filter system (Stormtech system with isolator rows).

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan (Section 14 of the application) that is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPS, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by, and revised in response to the comments of the Division of Watershed Management (DWM) of the Bureau of Land and Water Quality (BLWQ). DWM recommended that the applicant implement a dewatering plan during construction. The plans were revised to include a dewatering plan.

Erosion control details will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the construction contractor. Prior the start of construction, the applicant must conduct a pre-construction meeting to discuss the construction schedule and the erosion and sediment control plan with the appropriate parties. This meeting must be attended by the applicant's representative, Department staff, the design engineer, and the contractor.

(2) Inspection and Maintenance: The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. This plan was reviewed by, and revised in response to the comments of DWM. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. A homeowners' association will be established that will be responsible for the maintenance of all common facilities including the stormwater management system. The Declaration of Covenants and Restrictions for the association was reviewed and found to meet Department requirements. Prior to the formation of the homeowners' association, the applicant will be responsible for all such maintenance

The applicant submitted a draft service contract for the ongoing maintenance of the stormwater management system. Prior to occupancy of the first new building, the applicant must submit a copy of an executed long-term maintenance contract (minimum of 5 years and renewable) for the on-going maintenance of the stormwater control structures to the BLWQ. Storm sewer grit and sediment materials removed from

stormwater control structures during maintenance activities must be disposed of in compliance with the Department's Solid Waste Management Rules.

(3) Housekeeping: The proposed project will comply with the performance standards outlined in Appendix C of Chapter 500.

Based on DWM's review of the erosion and sedimentation control plan and the maintenance plan, the Department finds that the proposed project meets the Basic Standards contained in Chapter 500(4)(A).

B. General Standard: The applicant's stormwater management plan includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts. This mitigation is being achieved by using Best Management Practices (BMP) that will control runoff from no less than 95% of the impervious area and no less than 80% of the developed area.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to, comments from DWM. After a final review, DWM commented that the proposed stormwater management system is designed in accordance with the Chapter 500 General Standard. DWM recommended that the installation of the stormwater system be inspected by the applicant's design engineer or other qualified professional. Upon completion of the system, the applicant must submit written certification to the BLWQ that it was installed in accordance with the approved plans.

Based on the stormwater system's design and DWM's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500, Basic and General Standards.

C. Flooding Standard:

The applicant is not proposing a formal stormwater management system to detain stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. Instead, since the project site is located adjacent to the Presumpscot River, the applicant requested a waiver from the flooding standard pursuant to Department Rules, Chapter 500(4)(E)(2)(a). DWM commented that, given the site's location and watershed, the proposed system is eligible to receive a waiver from the flooding standard.

Based on the system's design and DWM's review, the Department finds that the applicant has demonstrated that the Chapter 500, Flooding Standard for peak flow from the project site, and channel limits and runoff areas, may be waived for the proposed project.

11. GROUNDWATER:

The project site is not located over a mapped sand and gravel aquifer. The proposed project does not propose any withdrawal from, or discharge to, the groundwater.

The applicant received a Voluntary Response Action Program (VRAP) permit from the Department's Bureau of Remediation and Waste Management, dated November 9, 2005, to conduct remedial actions on the site. Any special or hazardous wastes encountered during site development will be disposed of in accordance with the standards and regulations outlined in the VRAP permit.

The Department finds that the proposed project will not have an unreasonable adverse effect on ground water quality.

12. WATER SUPPLY:

When completed, the proposed project is anticipated to use 17,010 gallons of water per day. Water will be supplied by the Portland Water District. The applicant submitted a letter from the District, dated March 16, 2007, indicating that it will be capable of servicing this project.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply.

13. WASTEWATER DISPOSAL:

When completed, the proposed project is anticipated to discharge 17,010 gallons of wastewater per day to the Portland Water District's wastewater treatment facility located in Westbrook. The applicant proposes to construct a sewer pump station that will be owned and operated by the Portland Water District. The applicant submitted a letter from the Portland Water District, dated March 16, 2007, stating that the Westbrook facility will accept these flows. This project was reviewed by the Division of Water Quality Management of the Bureau of Land and Water Quality (DWQM), which commented that the Portland Water District's Westbrook facility has the capacity to treat these flows and is operating in compliance with the water quality laws of the State of Maine.

Based on DWQM's comments, the Department finds that the applicant has made adequate provision for wastewater disposal at a facility that has the capacity to ensure satisfactory treatment.

14. SOLID WASTE:

When completed, the proposed project is anticipated to generate 110 tons of household solid waste per year. All general solid wastes from the proposed project will be disposed

of at EcoMaine, which is currently in substantial compliance with the Solid Waste Management Regulations of the State of Maine.

The proposed project will generate a minimal amount of stumps and grubbings. All stumps and grubbings generated will be processed on site, with the remainder to be either worked into the soil or utilized as an erosion control measure, in compliance with Solid Waste Management Regulations of the State of Maine.

The proposed project will generate approximately 920 tons of construction debris and demolition debris. The construction and demolition debris generated will be disposed of at either Plan-It Recycling in Gorham or Riverside Recycling in Portland, both of which are currently in substantial compliance with the Solid Waste Management Regulations of the State of Maine.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal.

15. FLOODING:

The applicant submitted a Conditional Letter of Map Revision from the Federal Emergency Management Agency, dated May 8, 2007. Based on this letter, the proposed project is not located within the 100-year floodway of any river or stream.

The Department finds that the proposed project is unlikely to cause or increase flooding or cause an unreasonable flood hazard to any structure.

16. WETLAND IMPACTS:

The applicant proposes to alter approximately 4,800 square feet of a waterbody to remove an existing abandoned mill building and restore the bank of the Presumpscot River. The applicant also proposes to fill 740 square feet of an artificially-created drainage channel and construct stormwater outfalls within 75 feet of the river.

The Department's Wetlands and Waterbodies Protection Rules, Chapter 310, require the applicant to meet the following standards:

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. Each application for a Natural Resources Protection Act permit must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist. The applicant submitted an alternative analysis for the proposed project completed by Northeast Civil Solutions. The applicant's original plan included leaving the mill building's wall and then filling in behind it. The proposed project, removing the wall and restoring the river bank in this

location, represents less environmental impact. The applicant proposes to remove the debris from the edge of the river and grade the area to create a stable slope.

B. Minimal Alteration. The amount of waterbody and wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicant stated that the fill within the river is necessary in order to create a stable, vegetated slope after removal of the mill building. The existing mill building is constructed on piles over a portion of the river. The proposed project includes removal of the building, and the restoration of 28,680 square feet of river bank and approximately 2,165 square feet of floodplain downstream of the existing hydro-electric dam.

C. Compensation. Given the existing developed nature of the project site, compensation is not required to achieve the goal of no net loss of wetland and waterbody functions and values. The proposed project is expected to have a positive effect on the quality of the site's stormwater runoff. The removal of the mill building and the restoration of the river bank will allow for the cooling of the runoff to avoid thermal impacts, and site remediation under the VRAP permit will result in the removal of multiple sources of pollution that currently exist on site. The additional flood plain storage area created by the removal of the building and restoration of the river bank is approximately equivalent in volume to the fill proposed in the river.

The Department finds that the applicant has avoided and minimized wetland and waterbody impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.

- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in 38 M.R.S.A. Section 480-P.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 481 et seq.:

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards.
- B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities provided the buffer adjacent to the Presumpscot River is marked and protected as described in Finding 6 and any rock crusher is operated as described in Finding 9.
- C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil.
- D. The proposed development meets the standards for storm water management in Section 420-D and the standard for erosion and sedimentation control in Section 420-C provided a pre-construction meeting is held and inspections of the stormwater system are conducted as described in Finding 10.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
- F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities, solid waste disposal and roadways required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities and roadways in the municipality or area served by those services.

- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES the application of H.R.C. – Village at Little Falls, L. L. C. to construct an 85-unit condominium development as described in Finding 1 in Windham, Maine, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.
2. In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. The applicant or other responsible party shall, within three months of the expiration of each five-year interval from the date of this Order, submit a report certifying that the items listed in Department Rules, Chapter 500, Appendix B(4) have been completed in accordance with the approved plans.
5. Prior the start of construction, the applicant shall conduct a pre-construction meeting. This meeting shall be attended by the applicant's representative, Department staff, the design engineer, and the contractor.
6. Prior to occupancy, the location of the buffer adjacent to the Presumpscot River shall be permanently marked on the ground.
7. The deed for the common area shall contain deed restrictions relative to the buffer and have attached to it a plot plan for the area, drawn to scale, that specifies the location of the buffer. Prior to occupancy of any new building, the applicant shall submit a copy of the recorded deed restrictions, including the plot plan, to the BLWQ.
8. If a rock crusher will be utilized on site during construction, the applicant shall insure that the crusher is licensed by the Department's Bureau of Air Quality and is being operated in accordance with that license.

9. Prior to occupancy of any new building, the applicant shall submit a copy of an executed long-term maintenance contract (minimum of 5 years and renewable) for the on-going maintenance of the stormwater control structures to the BLWQ.
10. The installation of the stormwater system shall be inspected by the applicant's design engineer or other qualified professional. Upon completion of the system, the applicant shall submit written certification to the BLWQ that it was installed in accordance with the approved plans

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED AT AUGUSTA, MAINE, THIS 26TH DAY OF JULY, 2007.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By:


DAVID P. LITTELL, COMMISSIONER

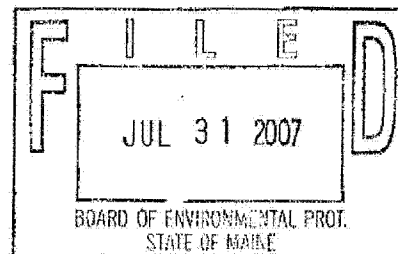
PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application March 27, 2007

Date of application acceptance April 5, 2007

Date filed with Board of Environmental Protection

MR/ATS#64978&64979/L23637AN&BN



SITE LOCATION OF DEVELOPMENT (SITE)
STANDARD CONDITIONS

**STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL
IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL.**

1. This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans, proposals and supporting documents is subject to the review and approval of the Board prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited, without prior approval by the Board of Environmental Protection, and the applicant shall include deed restrictions to this effect.
2. The applicant shall secure and comply with all applicable Federal, State and local licenses, permits, authorizations, conditions, agreements, and orders, prior to or during construction and operation as appropriate.
3. The applicant shall submit all reports and information requested by the Board or Department demonstrating that the applicant has complied or will comply with all conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
4. Advertising relating to matters included in this application shall refer to this approval only if it notes that the approval has been granted **WITH CONDITIONS**, and indicates where copies of those conditions may be obtained.
5. Unless otherwise provided in this approval, the applicant shall not sell, lease, assign or otherwise transfer the development or any portion thereof without prior written approval of the Board where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval shall be granted only if the applicant or transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant.
6. If the construction or operation of the activity is not begun within two years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. Reapplications for approval shall state the reasons why the development was not begun within two years from the granting of the initial approval and the reasons why the applicant will be able to begin the activity within two years from the granting of a new approval, if granted. Reapplications for approval may include information submitted in the initial application by reference.
7. If the approved development is not completed within five years from the date of the granting of approval, the Board may reexamine its approval and impose additional terms or conditions or prescribe other necessary corrective action to respond to significant changes in circumstances which may have occurred during the five-year period.
8. A copy of this approval must be included in or attached to all contract bid specifications for the development.
9. Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the developer a copy of this approval.

(2/81)/Revised November 1, 1979

DEPLW 148

VIL_RESP01365



NATURAL RESOURCE PROTECTION ACT (NRPA) STANDARD CONDITIONS

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCE PROTECTION ACT, TITLE 38, M.R.S.A. SECTION 480-A ET.SEQ. UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

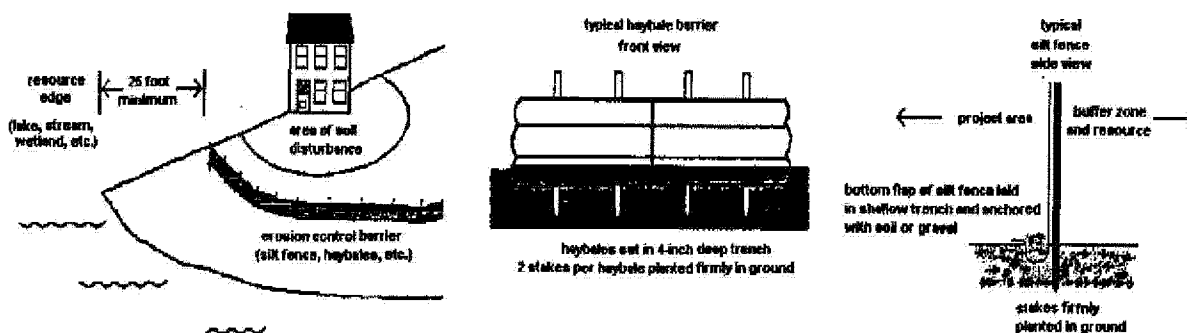
- A. **Approval of Variations From Plans.** The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. **Compliance With All Applicable Laws.** The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. **Erosion Control.** The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. **Compliance With Conditions.** Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. **Initiation of Activity Within Two Years.** If construction or operation of the activity is not begun within two years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits shall state the reasons why the applicant will be able to begin the activity within two years form the granting of a new permit, if so granted. Reapplications for permits may include information submitted in the initial application by reference.
- F. **Reexamination After Five Years.** If the approved activity is not completed within five years from the date of the granting of a permit, the Board may reexamine its permit approval and impose additional terms or conditions to respond to significant changes in circumstances which may have occurred during the five-year period.
- G. **No Construction Equipment Below High Water.** No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- H. **Permit Included In Contract Bids.** A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- I. **Permit Shown To Contractor.** Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.



Erosion Control

Before Construction

1. If you have hired a contractor, make sure you have discussed your permit with them. Talk about what measures they plan to take to control erosion. Everybody involved should understand what the resource is and where it is located. Most people could identify the edge of a lake or a river. The edges of wetlands, however, are often not obvious. Your contractor may be the person actually pushing dirt around but you are both responsible for complying with the permit.
2. Call around and find sources for your erosion controls. You will probably need silt fence, hay bales and grass seed or conservation mix. Some good places to check are feed stores, hardware stores, landscapers and contractor supply houses. It is not always easy to find hay or straw during late winter and early spring. It may also be more expensive during those times of year. Plan ahead. Purchase a supply early and keep it under a tarp.
3. Before any soil is disturbed, make sure an erosion control barrier has been installed. The barrier can be either a silt fence, a row of staked hay bales, or both. Use the drawings below as a guide for correct installation and placement. The barrier should be placed as close as possible to the activity.
4. If a contractor is installing the barrier, double check it as a precaution. Erosion control barriers should be installed "on the contour", meaning at the same level along the land slope, whenever possible. This keeps stormwater from flowing to the lowest point of the barrier where it builds up and overflows or destroys it.



During Construction

1. Use lots of hay or straw mulch on disturbed soil. The idea behind mulch is to prevent rain from striking the soil directly. It is the force of raindrops striking the soil that causes a lot of erosion. More than 90% of erosion is prevented by keeping the soil covered.
2. Inspect your erosion control barriers frequently. This is especially important after a rainfall. If there is muddy water leaving the project site, then your erosion controls are not working as intended. In that situation, stop work and figure out what can be done to prevent more soil from getting past the barrier.

After Construction

1. After the project is complete, replant the area. All ground covers are not equal. For instance, a mix of creeping red fescue and Kentucky bluegrass is a good choice for lawns and other high maintenance areas. The same mix would not be a good choice for stabilizing a road shoulder or a cut bank that you don't intend to mow.
2. If you finish your project after September 15, then do not spread grass seed. There is a very good chance that the seed will germinate and be killed by a frost before it has a chance to become established. Instead, mulch the site with a thick layer of hay or straw. In the spring, rake off the mulch and seed the area. Don't forget to mulch again to hold in moisture and prevent the seed from washing away.
3. Keep your erosion control barrier up and maintained until the area is permanently stabilized.

VIL_RESP01367



Federal Emergency Management Agency

Washington, D.C. 20472

CONDITIONAL LETTER OF MAP REVISION BASED ON FILL COMMENT DOCUMENT

COMMUNITY AND MAP PANEL INFORMATION

LEGAL PROPERTY DESCRIPTION

COMMUNITY

TOWN OF WINDHAM,
CUMBERLAND COUNTY, MAINE

Proposed Village at Little Falls

COMMUNITY NO.: 230189

AFFECTED
MAP PANEL

NUMBER: 2301890025B

DATE: 9/2/1981

FLOODING SOURCE: PRESUMPSCOT RIVER

APPROXIMATE LATITUDE & LONGITUDE OF PROPERTY: 43.735, -70.425

SOURCE OF LAT & LONG: PRECISION MAPPING STREETS 7.0

DATUM: NAD 83

COMMENT TABLE REGARDING THE PROPOSED PROPERTY (PLEASE NOTE THAT THIS IS NOT A FINAL DETERMINATION. A FINAL DETERMINATION WILL BE MADE UPON RECEIPT OF AS-BUILT INFORMATION REGARDING THIS PROPERTY.)

LOT	BLOCK/ SECTION	SUBDIVISION	STREET	OUTCOME WHAT WOULD BE REMOVED FROM THE SFHA	FLOOD ZONE	1% ANNUAL CHANCE FLOOD ELEVATION (NGVD 29)	LOWEST ADJACENT GRADE ELEVATION (NGVD 29)	LOWEST LOT ELEVATION (NGVD 29)
--	--	Village as Little Falls	--	Structure (Units 1-3)	C	115.4 feet	117.5 feet	--

Special Flood Hazard Area (SFHA) - The SFHA is an area that would be inundated by the flood having a 1-percent chance of being equaled or exceeded in any given year (base flood).

ADDITIONAL CONSIDERATIONS (Please refer to the appropriate section on Attachment 1 for the additional considerations listed below.)

DETERMINATION TABLE (CONTINUED)
PORTIONS REMAIN IN THE FLOODWAY
CONDITIONAL LOMR-F DETERMINATION

This document provides the Federal Emergency Management Agency's comment regarding a request for a Conditional Letter of Map Revision based on Fill for the property described above. Using the information submitted and the effective National Flood Insurance Program (NFIP) map, we have determined that the proposed structure(s) on the property(ies) would not be located in the SFHA, an area inundated by the flood having a 1-percent chance of being equaled or exceeded in any given year (base flood) if built as proposed. Our final determination will be made upon receipt of a copy of this document, as-built elevations, and a completed Community Acknowledgement form. Proper completion of this form certifies the subject property is reasonably safe from flooding in accordance with Part 65.5(a)(4) of our regulations. Further guidance on determining if the subject property is reasonably safe from flooding may be found in FEMA Technical Bulletin 10-01. A copy of this bulletin can be obtained by calling the FEMA Map Assistance Center toll free at (877) 336-2627 (877-FEMA MAP) or from our web site at <http://www.fema.gov/mit/tb1001.pdf>. This document is not a final determination; it only provides our comment on the proposed project in relation to the SFHA shown on the effective NFIP map.

This comment document is based on the flood data presently available. The enclosed documents provide additional information regarding this request. If you have any questions about this document, please contact the FEMA Map Assistance Center toll free at (877) 336-2627 (877-FEMA MAP) or by letter addressed to the Federal Emergency Management Agency, 3601 Eisenhower Avenue, Suite 130, Alexandria, VA 22304-6439.

William R. Blanton Jr.

William R. Blanton Jr., CFM, Chief
Engineering Management Section
Mitigation Division

VIL_RESP01368